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Shaping the Danish People's Church in the Context of Freedom of Religion

A.S. Ørsted (1778-1860) and N.F.S. Grundtvig (1783-1872)

Lisbet Christoffersen and Niels Henrik Gregersen

Abstract

In this chapter, we investigate the interactions between the “theologizing jurist” A.S. Ørsted and the “historicizing theologian” N.F.S. Grundtvig. Taking our point of departure in their initial conflicts in the 1810s, we show their mutual rapprochement in 1826, and follow in detail their distinctive positions at the 1848-49 constitutional assembly. Ørsted and Grundtvig were among the most active speakers at the assembly that formulated the Danish Constitution of 1849. Both argued for freedom of religion but whereas Ørsted wanted this freedom to be given by law by the legislative decisions to come, Grundtvig wanted the freedom of religion to be given a prominent place in the Constitution. Regarding the People's church, they agreed on the identification of the People's Church as a confessionally defined Evangelical-Lutheran church, though Grundtvig worked for a high degree of freedom for members as well as pastors within the church. We argue that Ørsted and Grundtvig reversed their roles over time. Grundtvig began as a conservative but ended up promoting the most liberal ecclesiastical legislation. Ørsted began as a liberal administrator of church affairs but ended up as a conservative voice in the parliament. Not because he had changed his views, but because the society had changed – from the age of an open-minded absolutism to the age of democracy.

Key words: N.F.S. Grundtvig; A.S. Ørsted; Danish Constitution 1849; People's Church of Denmark; freedom of religion; ecclesiastical law in Denmark; law-and-religion.

1. Introduction

This chapter brings together two leading figures of Golden Age Denmark central for understanding the legal and theological cultures behind the transition from a state church to the People's Church in the Danish Constitution of 1849. Anders Sandøe Ørsted is generally considered to be Denmark's leading jurist in the first half of the nineteenth century, laying the foundation for the subsequent generation of legal scholarship in Denmark. Alongside his own scholarship, he was head of the central legal office of late Absolutism, and after the constitutional change even elected as prime minister in 1853-54. The theologian Nikolaj Frederik Severin Grundtvig was a prolific writer as historian and poet, theologian and educator, pastor and hymnwriter, publishing more than 37.000 pages in his lifetime. Despite the many ups and downs of his personal biography, he ended up as a towering cultural figure of the Danish church, and a member of the lower and the upper houses of the parliament too.

Ørsted and Grundtvig had a long history with one another before they met as members of the constitutional assembly 1848-49. The Constitution of June 5, 1849, still in force today, led to the

installment of a representative democracy in Denmark.ⁱ In its own words, the Constitution speaks of the new rule of governance as a “constitutional monarchy” (§ 1: *indskrænket-monarkisk*), that is, a monarchy limited by the parliamentary system.

The constitutional rules on church and freedom of religion have undergone only very limited changes since 1849.ⁱⁱ The preamble to the Constitution in § 3 (today § 4) defines the central national role of the Evangelical-Lutheran church: “The Evangelical Lutheran church is the church of the Danish people, and is as such to be supported by the state”.ⁱⁱⁱ This paragraph signals the end of the absolutist royal state church and takes its legal point of departure in the historical fact that the Evangelical-Lutheran church was the majority church of the Danish people, now dubbed the People’s Church (*Folkekirke*). In 1849, more than 99% of the population were baptized members of the Evangelical Lutheran Church in Denmark (by January 1, 2020, 74,3 % are members). The June Constitution refers to the Evangelical-Lutheran church as a *prior social fact*, as also stated in an earlier draft to the constitution (§ 1b): “The Lutheran church, being the church to which the majority of population confesses, is to be regarded as the Danish people’s church and is entitled to be supported by the state”.^{iv} § 3 is a concise abbreviation of this earlier draft.

The writers of the Constitution thus legitimized the central role of the Lutheran Church by the *de facto* allegiance of the Danish people to this church, thereby avoiding confessionalist gestures on behalf of the legislators. Through legislation the church should be given an internal legal structure, possibly independent from the state structure (§ 80, now § 66), but despite several attempts this so-called “promissional paragraph” was never fulfilled, much to the satisfaction of both Ørsted and Grundtvig.

At the same time, the Constitution secured the freedom of religion to all citizens (§ 81, now § 67), changing the status of this right from a royal resolution given June 21, 1848 into constitutional law. The legislative powers should organize the relations to other religious groups by law (§ 82, now § 69). In addition, the Constitution gave full civil and political rights to all citizens regardless of faith (§ 84, since 1953 changed to “regardless of faith and race”, § 70).

Only the king did not enjoy religious freedom, as stated in § 6: “The King has to belong to the Evangelical Lutheran Church”.^v While the Constitution grants freedom of religion both to individuals (including members of the parliament) and to religious groups (as long as they do not infringe the public order), the king cannot choose a religious community of his own will and discernment. This shows the particular profile of the Evangelical-Lutheran as a national church rooted in the Danish people rather than in royal and parliamentary decisions. The king has to follow the majority of the population: “People and King must be intertwined in order for the King to be real Danish, and this includes that he cannot be of any other religion than the majority of the people.”^{vi}

In a comparative perspective, some subtle differences come up here between the Scandinavian churches in the nineteenth century, which we may formulate as follows: In Denmark, the king had to be a member of the people’s church; in Norway, the people, according the 1814 Constitution, had to belong to the king’s church; in Sweden, both the people and the king belonged to the state church. Crude as this comparison is, it is interesting that the Danish version of a “People’s church” presupposes that the parliament and the king are obliged to *acknowledge* the Evangelical Lutheran

Church as the one shared by the majority of the Danish people, even though its practical affairs continued to be governed by royal decrees and parliamentary legislation.

In this article we argue that A.S. Ørsted and N.F.S. Grundtvig were instrumental in shaping the legal and theological contours of the Danish People's Church and the freedom of religion. They had different ecclesiological ideals, though. While Ørsted preferred the continuation of a relaxed version of the old state church, Grundtvig ended up seeing the People's Church as a beneficial external framework for congregational life within the People's Church. And while Ørsted wanted to grant freedom of religion by law, decided for by parliament, Grundtvig was strong in arguing for the constitutional basis for that right. Nonetheless, they shared was a fundamental distinction between the variegated religious life, on the one hand, and state organization, on the other; they also shared the social vision of common concerns between the national church and the national culture, given their long history of intertwinement. Eventually, many older structures of the state church survived in the People's Church, not least the territorial system of parishes, and the common legislative, administrative and judiciary rules decided by the parliament and the minister for the church. Stable regulations were also maintained for the education of pastors (via the university), for the recruitment of pastors (via the bishops), for organizing the church (since 1903 supplemented with congregational councils, and since 1922 with deanery councils), in addition to providing for a nationwide system of membership-based church taxes (introduced 1903).

Ørsted and Grundtvig had quite a few controversies paving the way for their later negotiations at the Constitutional assembly in 1848-49. Differences between the two appear not only in their different educational backgrounds, but also in relation to their place in the Danish establishment up to 1849. Together with his brother, H.C. Ørsted, A.S. Ørsted belonged to the inner circle of Golden Age Denmark, including literary figures such as the national poet Adam Oehlenschläger (Anders married his sister in 1802), Baggesen the author, the Copenhagen and Zealand bishops Münther, Mynster and Martensen, etc. By comparison, Grundtvig led a more solitary life as a free author and pastor until he began to attract ever more followers, supported from the royal house too. Whereas A.S. Ørsted was an early starter and held high positions in the Danish administration and government, Grundtvig was a late bloomer, living in insecure economic conditions until he was in his 50s, and even put under censorship between 1825 and 1837. While A.S. Ørsted had an overall smooth career ending as prime minister 1853-54, Grundtvig constantly involved himself in conflicts with his environments; only late in life he gained the social recognition that he had been longing for since his youth. For a long period more infamous than famous, his recognition began to grow in 1830s, and in 1861 he was given the title of "honorary bishop," an *ad-hominem* title never used again in Danish history.

In what follows, we offer portraits of the two figures, in which we show the contours of their work and their development as public discussants of the relationship between law and religion. We then follow their internal conflicts, sometimes by proxy, as when Anders' brother, the famous physicist H.C. Ørsted, entered in a debate on science and religion with Grundtvig in 1812-1815. The major debate, however, took place between Grundtvig and the liberal theologian H.N. Clausen in 1825, a debate that also led to a significant intervention by A.S. Ørsted in 1826.

In the period between 1826 and 1849, we see Ørsted and Grundtvig coming closer to one another in their common wish to secure a freedom of religion, though opting for different solutions. While Ørsted argued for retaining older Danish laws of religion while issuing administrative dispensations

in order to relax the burden of uniformity, Grundtvig worked for new laws for church and religion in order to establish a law-based framework for the Danish people that promulgates freedom for individuals as well as for religious fractions and groups. In some detail, we follow their positions and interactions in the constitutional assembly, based on the rich sources existing in the official transcripts from the parliamentary negotiations. We round up our arguments for seeing Ørsted and Grundtvig as two concurrent shapers of the idea of the People's Church in Denmark (*Folkekirke*). We see Ørsted focusing on a relaxed administration, tolerant to internal differences within the church, and Grundtvig as a political promoter of a principal freedom of religion, both within and outside the People's Church in Denmark.

2. Anders Sandøe Ørsted: A biographical sketch

A.S. Ørsted was born in 1778 in a small town in rural Denmark (Rudkøbing on Langeland) as one of two sons of a pharmacist. His older brother, H.C. Ørsted (1777-1851), was a chemist and pharmacist, known for identifying the universal law of electromagnetism experimentally, and for initiating and being first director of *Polyteknisk Lærestalt* (1829), today the Technical University of Denmark.^{vii} While Hans Christian Ørsted was an internationally renowned name, the reputation of Anders Sandøe Ørsted has remained national and Nordic.^{viii}

The Ørsted brothers arrived to the University of Copenhagen in 1794, and both were initially strongly influenced by the philosophy of Immanuel Kant. H.C. Ørsted passed his examination in pharmacy 1777, A.S. Ørsted gained his law degree in 1799. Already as a student, he had earned his living as a private teacher of law, and he continued with this occupation until 1813 along his other obligations.^{ix}

In 1799, the twenty-year old A.S. Ørsted applied for a position as assistant professor of law at Copenhagen University but without success, and he never became member of the Faculty of Law. Nonetheless, Ørsted continued on the academic path by his extensive scholarship, including editing important legal journals in Denmark (*Juridical Monthly*, 1802-03; *Legal Archive*, 1803-1812; *New Legal Archive* 1812-1820; *Juridical Journal* 1820-1826), to which he also contributed a great deal. He also published his collected essays in *Eunomia* ('Good law-making'), vols. I-IV (1815-1822), crowned by his main work, *Handbook on Danish and Norwegian Law* (six volumes, 1822-35). All these publications were written alongside his civil career. Aimed for developing the juridical skills in the courts, Ørsted's contributions laid the basis for the development of Danish and Norwegian legal thinking too.^x

Having not been accepted as university teacher, Ørsted started his career in 1801 as an assessor in the city court of Copenhagen, followed by a promotion to the Supreme Court in 1810. In 1813, a calling to become a civil servant in the central administration changed his destiny. 1825-1848 Ørsted worked as the chief person responsible for providing legal advice to the King and for formulating new legislation in the central administration (*Generalprokurør*). From 1842 he was also working as a leading member of the State Council, followed by his years as a politician during the new, more democratic era.

1809-1828 Ørsted supplemented his position in the court and in the central administration as a teacher of Ecclesiastical Law.^{xi} Ørsted thereby contributed to the development of the discipline of

ecclesiastical law in Denmark, until he had to give up this function due to his intervention in the conflict between N.F.S. Grundtvig and the professor of theology H.N. Clausen in 1825-26. Much against his own will, the king forced Ørsted to make a choice between his academic legal writing and his central position in the state administration. He chose the latter path, and was allowed to finish his ongoing publications until 1835. Even if this was a very painful personal experience for Ørsted, the royal letter to Ørsted was not a publicly known fact.

1835-1844 Ørsted represented the government as Royal Commissary in two of the four Advisory Councils (*Stænderforsamlinger*) in Roskilde (Zealand, East-Denmark) and Viborg (Jutland, West-Denmark). Hereby he became acquainted with political realities before entering the Constitutional Assembly 1848-49. Since 1849, he was a member of the Upper House, and April 1853-December 1854 prime minister as well as minister for church and education. This governmental period had to deal with the constitutional conflicts after the first wars against Prussia over Schleswig and Holstein 1848. The governmental period ended in 1854 with a trial against Ørsted and the other ministers for high treason, a trial for which they were dismissed.

A.S. Ørsted aimed his last years at writing his memoirs, *Of the History of My Life and My Time*, vols I-IV (1851-1857), of which some parts air a scent of bitterness over having been one of the liberals within the government, while in his later years being seen as one of the most conservative figures. "Those who lived in those years knows that any young person was taken by the ideas of the French revolution and wished the blossoming of religious and personal freedom in all countries. I have therefore always amused myself with the idea that we, the elders, according to the press of our times, should be seen as having grown up in days of darkness and that we, therefore, would not be able to understand pure freedom. We learned about freedom already in our childhood."^{xii}

In Danish legal theory, Ørsted is primarily seen as a representative for a comparative legal method within private law and criminal law. He built on legal principles in legislative praxis, but preferred a legal development that combined the theoretical concepts with concrete case law, that is, a method focusing on administrative decisions and court decisions, i.e. jurisprudence.^{xiii} In his argumentation for new legal principles, Ørsted became what today may be called a "pragmatic" jurist by setting theoretical moral and legal questions in the context of real-life practical situations, in which the juridical problems appear.^{xiv}

Ørsted, however, also discussed the theoretical foundations for the proposed solutions. He based his development of legal principles not only on particular cases and comparisons with foreign legal solutions, but also on his detailed knowledge of the philosophy of law.^{xv} His early Gold Medal thesis of Copenhagen University, *On the Relation between the Principle of the Doctrine of Virtue and the Doctrine of Law*^{xvi} (1798), dealt with the philosophy of Immanuel Kant and Johann Gottlieb Fichte. Looking back on his earliest writing, he recalls that he was somehow disappointed with Kant's *Foundations on the Metaphysics of Virtue* from 1797; this led him to "a break with the admiring trust in the old wise man, which I [at that time] so lightly had given me over to."^{xvii} The problem in Kant, according to Ørsted, was that he could not derive positive laws from natural law, and much to the detriment of Ørsted's teacher in natural law (Prof. J. Fr. W. Schlegel), the young Ørsted opted in 1798 for Fichte's view of the role of the state. The task of the state is to use positive state laws as technical means for securing external peace and the inner freedom for all citizens. The understanding of law-giving as an art not reducible to abstract morality continues in Ørsted's *oeuvre*, but he soon gave up on both Kant and Fichte. "After 1801, one cannot find any traces in my

writings that smacks thereof,”^{xviii} he wrote in his memories, thereby pointing to the beginnings of his civil career and of his own legal scholarship.

Moving away from the systems of natural law, both in the ontological tradition of Wolff and in the transcendental tradition of Kant, he integrated the idea of a normative impact on law from the moral and religious life of the people. Thus, already in 1804, he argued against the interpretation of the absolutist *Royal Law* from 1665 (§1) as if the king singlehandedly defines the people’s religion.

In a lecture from 1807 carrying the title, “Is the state entitled to issue laws and make public initiatives to the benefit of religion?”,^{xix} he answered emphatically in the positive. In relation to Kant, he conceded that morality is prior to religion but added that religion is more comprehensive than morality, and that morality cannot survive without religion.^{xx} In contrast to Fichte, he argued that his minimalist view of the role of the state as indifferent to religion and moral virtue is not tenable. “The goal of the state is the development of the force of reason in its fullness and glory.”^{xxi} This goal, however, can only be achieved if the state is able to rely on the good will of its citizens; after all, laws can never be enforced in each and any particular circumstance.^{xxii} The wellbeing of the heritage of virtue and religion is thus of central importance for a state which wants to take care for the wellbeing of the society. In the end, religion is the moral foundation of the law, and when the jurists in court evaluate the evidence, they should exercise their sense of justice (*Retsind*) and conscience (*Samvittighedsfuldhed*).^{xxiii} Ørsted thus emphasizes the positive role of moral and religious traditions for the state, eventually the view later carrying the June Constitution of 1849, § 3 (today § 4).^{xxiv} Just as ecclesiastical legislation should take into account a nation’s historical and religious culture, the state has a positive interest in regulating the religion of the land.^{xxv}

In a lecture introducing his teaching in ecclesiastical law at the Pastoral Seminary 1809, Ørsted issued the program that ecclesiastical law should address three interrelated viewpoints: the principles of ecclesiastical law via the philosophy of law, a clarification of the historical uses of ecclesiastical law, and finally the positive law. Already here, Ørsted emphasizes how legal concepts, norms and rules have developed in the life and legal traditions of a nation. Ørsted thus argued that a good knowledge of the historical background serves the understanding of the legal situation in current society.^{xxvi}

How this program was carried out within ecclesiastical law, we do not know in detail, but normative issues were henceforth central to Ørsted. The aim of ecclesiastical law is thus to clarify “the relation between our church order as it stands, and how it should be”.^{xxvii} One of the problems addressed in his opening lecture was the duty of pastors to follow their pastoral oath. Ørsted points to the continuous relevance of the Danish Law of 1683, which singles out the importance of the five confessions of the Evangelical-Lutheran Church (the Apostles’ Creed, the Nicene Creed of 381, Athanasianum, Luther’s Small Catechism, and the Augsburg Confession of 1530). However, he also refers to live theological options within the contemporary church.^{xxviii} Accordingly, non-allegiance to specific elements in the confessions should not automatically lead to a dismissal of a pastor.^{xxix}

In general, Ørsted aimed to find practical solutions based on the existing laws in their historical and philosophical tradition, paired with an understanding of the concrete situation on which the legal decision should be made. This approach leads Ditlev Tamm to focus on Ørsted’s influence on concrete private law areas, based on the comparative method. It leads Jørgen Dalberg-Larsen to

identify him as representing a realistic legal philosophy, namely a dialectic theory, which takes into account not only the formulation of the laws but also an interpretation of the concrete, factual situation. As highlighted in Sverre Blandhol's interpretation of Ørsted as a pragmatic, it is characteristic that Ørsted, in his concrete legal and scholarly work, did not apply a sharp distinction between law and context, between legal and moral argumentation, and between the current situation and the historical background.

In the broader perspective, A.S. Ørsted is a representative for Romanticism and the German historical school in legal science. Ørsted often referred to Savigny as one of his main inspirations. What he learned from Savigny was primarily that legal solutions should reflect the historical legal understandings in society. Law is based on, and derived from, natural feelings of justice and common sense with concerns for the needs of the state and the wider society at a given time. In this manner, Ørsted combined a cultural and historical awareness with a legal pragmatism – and with a focus on the learned jurist as the circumspective person responsible for interpreting the law.

3. Nicolai Frederik Severin Grundtvig: A biographical sketch

Unlike the writings of Ørsted, substantial parts of the works of N.F.S. Grundtvig (1783-1872) are available in German and English translations.^{xxx} An extensive international research literature depicts various facets of his intellectual history too.^{xxxi} For this reason, we will here focus on the aspects of Grundtvig's work of relevance for a comparison with Ørsted.

Grundtvig came to Copenhagen from the countryside too. Born in a vicarage in Udby (Southern Zealand), he received most of his schooling in Jutland, and lived since his 9th year with friends and family until he graduated from Aarhus Cathedral School in 1800. In 1803, he passed his theological exams with excellence at the University of Copenhagen at the age of 20.

While the Ørsted brothers belonged to the inner circles of the cultural elite of Golden Age Denmark, Grundtvig remained an outsider to the academic milieu in Copenhagen. As a young man, he left Copenhagen to become a teacher of small children at a manor house in the countryside (1805-08), where a platonic love affair opened his senses for a Romantic worldview. In his teenage years, like so many others, Grundtvig shared the Enlightenment ideals, and after his graduation in theology, he decidedly did not want to become a pastor. Yet soon he was to take part in the Romantic turn in philosophy, history, and poetry. As early as 1802, Grundtvig heard the philosopher Henrich Steffens, a cousin of Grundtvig, give his nine lectures on the philosophy of nature, presented in the spirit of F.W.J. Schelling and published in Danish as *Introduction to Lectures on Philosophy*, 1803.^{xxxii} Grundtvig later described Steffens as the "lightning-man" who appeared in Copenhagen "like an angel from the heavens", even if he admitted that he was not sure how much he actually understood as a young student.^{xxxiii} Coming back from the manor house to Copenhagen in 1808, he obtained a position as a teacher in history and geography at a high school in Copenhagen until 1810, though he had hoped for a position as historian at the University of Copenhagen.

At this early stage, Grundtvig shared the longing for a deep internal coherence between history and nature with the Ørsted brothers, as evidenced in his first full-scale book, *On Religion and Liturgy* from 1807. Soon after, however, he became convinced that life and death were opposing forces that

could not be mediated within a natural philosophy based on the postulate of a deep-seated harmony of good and evil, nature and history. His translations and studies in Norse mythology 1808-1810 convinced him of a more conflict-oriented view of good and evil. Giving up on the natural philosophy of Schelling and Steffens, Grundtvig aimed so much more to find a bridge between Nordic mythology and Christian faith. In a poem from 1808, he refers to “high Odin” and White Christ” as “sons of the All-Father”, arguing that “settled is your former clash”, for both have loved “our Father.”^{xxxiv} Compared to the Romanticism of the Ørsted-brothers, Grundtvig’s use of Romantic ideas was thus poetical and historical rather than scientific and legal in orientation.

In 1810, however, Grundtvig’s father called upon him to become his vicar in order to help him out in his vicarage. Due to his scholarly ambitions, Grundtvig did not really want to leave Copenhagen but felt obliged to do so, but in order to be ordained he had to pass a pastoral exam with a sermon. Already April 11, 1810 Grundtvig published the sermon under the title, “Why has the Word of the Lord disappeared from His House?” In this dismissory sermon, Grundtvig openly and sharply criticized the taste of rationalist theology, and even accused his pastoral colleagues for not believing in the gospel that they were called to preach. A critical note from his examiners led to a rebuke of Grundtvig by the administration for attacking his fellow pastors. As a teacher in ecclesiastical law, Ørsted must have known of the sermon and the subsequent legal trial.^{xxxv}

With the official rebuke in his backpack, Grundtvig returned to the parish in Udby in a state of mental distress. A famous episode of mental breakdown on the way home led him further into a phase of Biblicism and Lutheran piety. He no longer placed the figures of Norse mythology on par with Christ but programmatically below “the holy Christians who follow the commandments of Christ and dare to receive the fruits of his death.”^{xxxvi} Soon after his recovery, Grundtvig wrote his first hymn, *Lovely is the midnight sky*,^{xxxvii} a retelling of the Christmas story, which already gives evidence of the world-affirming tone in the about 1500 hymns that he was to produce over his lifetime.

In 1813, when his father died, Grundtvig was able to return to Copenhagen. He was in the process of writing his *World Chronicles*, published 1812, 1814 and 1817. Writing in the 1812-volume on the early history of humanity up to his present day, Grundtvig appealed to revelation as the safest source of knowledge. He took for granted as historical facts what he read in the Old Testament, and criticized the secularism and pantheism of his own age. It was in this Biblicist phase (1810-14) that the conflict between Grundtvig and H.C. Ørsted took place, as we will see in the next section.

Between 1813 and 1821, Grundtvig worked as an independent scholar. His strong views and fiery temperament caused annoyance in the leading cultural and ecclesiastical circles in Copenhagen, and made it difficult for him to receive a calling as a pastor too. Nonetheless, he wrote new versions of his *World Chronicle* inspired by the idea of universal history in Johann Gottfried Herder’s *Ideas on the Philosophy of the History of Mankind* (1784-91). In particular, Grundtvig shared Herder’s view that each nation has a particular “spirit,” given with its history, language and people.

He also produced the journal *Danne-Virke* (1816-19), singlehandedly written by the editor himself. These more philosophical articles show a broadening of Grundtvig’s horizon. Alongside essays and poems on Danish history, he continued his earlier work on the Nordic spirit but now within the framework of a Christian apologetics that appealed to common sense. Most importantly, Grundtvig criticized the view that human consciousness can be set apart from the outside world, as in Kant’

and Fichte's idea of the transcendental Ego. Positively, Grundtvig argued for the view that all human understanding takes its point of departure in the human senses (in particular touching, hearing, and seeing), though always transformed within the specific human awareness of spiritual relations (beauty, truth, and goodness). God is the creator of a universe with both sensible and spiritual relations, but nowhere is divinity creativity more visible than in the poetic activity of human beings, created as they are in the image and likeness of God.

In 1821-22, Grundtvig was finally given a position in Præstø in southern Zealand, and in 1822-1826 he became a pastor in one of the centrally placed churches in Copenhagen, Our Savior's Church. Until then, Grundtvig's concept of the church had been relatively vague, and even oscillating. Now Grundtvig began to discover the importance of the community as the people of God, whom he also warmly addressed in his sermons as "my friends" or "Christian friends." Grundtvig began to discover the importance of the congregational life as part of the historical church. He was no longer a lonely preacher: The church of Christ, even if low in number, was a reality based on the power of the Holy Spirit that had been at work in the preceding centuries.^{xxxviii}

Grundtvig's main focus was now to identify the essentials of Christian faith aligned with the long tradition of a church that existed even prior to the writings of the New Testament. He began to develop what he since 1825 called his "Church View", arguing that baptism and the Holy Supper, "the Font and the Table", constitute the life of the church due to the personal presence of Christ. Baptism stands out as the beginning of the Christian life (faith), subsequently nourished by the preaching (hope), in order to be fulfilled at the Lord's Supper (love). Since the Apostolic Creed is the condition for baptism, Grundtvig even aired the contentious view that the Creed had been handed over to the apostles by Christ himself alongside the commandment of baptism and the invitation to join the Table. With this new emphasis on the continuity of the church, he superseded his earlier Biblicism, while pointing to the presence of Christ in the midst of the faithful congregation. In this period, he also began to take seriously the revivalist movements of his day. He saw them as expressions of a vital Christian lay people who were closer to the historical church than were the rationalist pastors of his day, even if he did not share their negative views of culture, and their heated appeals to conversion.^{xxxix}

In 1825, Grundtvig's emotions were aroused again in his (in)famous conflict with the young promising professor of theology, H.N. Clausen (1793-1877). He had just published a massive work on *Catholicism and Protestantism: Their Church Order, Doctrine, and Ritual*. Grundtvig immediately felt obliged to write a harsh response under the title, *The Church's Retort*, in which he attacked Clausen's version of Christianity as "completely false" and his idea of Protestantism as a "temple of idols", "a self-made castle-in-the-air."^{xl} Grundtvig even required that Clausen either apologize for his unchristian theology, or resign his university chair and openly discard his name as a Christian.

This conflict established Grundtvig's entrance on the public scene in Denmark, a scene he would not leave again until his death nearly 50 years later. The first print of 500 copies was sold out within days. Clausen, however, did not respond to Grundtvig other than raising a libel case against him. It was during this legal process that A.S. Ørsted intervened in the debate causing himself substantial troubles with the royal court, as we saw above. Soon after, Clausen won the case against Grundtvig, and Grundtvig was fined and put under life-long censorship (lifted December 27, 1837). In protest, Grundtvig stepped down from his position as pastor on the eve of Pentecostal day 1826, in deep

disillusion with the Danish church. How could he and other ‘old fashioned Lutheran believers’ live and express a Christian faith within the state church?

In a long period after 1826, Grundtvig again had nothing to support him for a living, except for what came in from his publications and his followers. In addition, the king gave him some subsidies, including financial support to make three travels to England during the summers of 1829, 1830, and 1831. Inspired by these English experiences, Grundtvig began to develop a new cultural vision for the relation between church and culture. Grundtvig now focused on what is common for human beings despite differences of faith.

In his famous “Introduction” to a fully new version of *Nordic Mythology* (1832), he laid out a new cultural agenda, based on a positive theological anthropology: A human being is a divine experiment of dust and spirit, “in whom divine powers through thousands of generations proclaim, develop, and enlighten themselves as a divine experiment, in order to show how spirit and dust can permeate one another and be transfigured into a common divine consciousness.”^{xli} Based on this “Judeo-Christian” understanding of humanity and life, there should be a friendly collaboration between Christians and “naturalists of spirit”. Grundtvig did not mention candidates for this designation, but who could qualify better as a naturalist of spirit than H.C. Ørsted, with whom he had twenty years earlier been in conflict?

Moreover, the travels to England convinced Grundtvig of the importance of dealing with practical and political affairs. “In all parliamentary matters, I think of the English”, he declared in 1839, and he openly confessed his “anglomania.”^{xlii} Grundtvig became a strong proponent of freedom of religion as a God-given human right, a right not only given to individuals but also to religious groups such as the Baptists, the Quakers, and other revivalists.^{xliii} “Without every other freedom, religious freedom would be futile.”^{xliv} Grundtvig thus involved himself in many causes of freedom: freedom of expression, freedom of schools, freedom of trade, and was active in the cause for the liberation of slaves too. Similarly, as early as 1831, he argued for freeing the German-speaking Holstein from its forced merger with the Danish kingdom, based on the rights of a people to decide for itself. “Self-done is well-done!”^{xlv} In this spirit, Grundtvig and his collaborators established exam-free People’s High Schools since 1844. These “schools for life” should enlighten the understanding of ordinary people in the Nordic countries, and capacitate them for taking active part in society.^{xlvi}

Aged 65, Grundtvig offered himself as a candidate for the convention that should draft the new democratic constitution 1848-49, and he became a member of the assembly after a couple of attempts.^{xlvii} Grundtvig was also a member of the lower house of the Parliament 1849-1852 and 1854-1858. As a very frequent speaker he spoke for freedom and against the involvement of the state in the internal affairs of religious communities. In 1848, Grundtvig was still hesitant towards free electoral rights (and even refrained from voting for the new Constitution), since he believed in developing the union between “the hand of the king and the voice of the people.”^{xlviii} In 1866, however, Grundtvig, now aged 82, stood for the upper house of the Parliament in order to defend the very same free electoral rights, which he saw threatened by the constitutional change in 1866. This change from being a Romantic royalist to become a defender of a representative democracy was based in his trust in state institutions, now redefined as institutions representing the people.

Only as late as 1839, Grundtvig was given an extraordinary vicarage in a hospital for elderly women, Vartov, in the Center of Copenhagen. There he stayed until his death in 1872, and Vartov became (and still is) the center for present-day Grundtvigians.

4. Science and faith: The conflict between H.C. Ørsted and N.F.S. Grundtvig 1814-15

Let us now go back to the early clash between Grundtvig and the Ørsted-brothers, occasioned by his *World Chronicle* of December 1812. A.S. Ørsted followed closely theological discussions, and his animosity towards Grundtvig was growing. This is witnessed in letters exchanged with his brother in 1813. Ørsted found that Grundtvig's publication of a biblical world history was an example of "unreason and tastelessness," and his brother promised to take issue with "this man's animosity against reason" at the first given opportunity.^{xlix}

That opportunity came in 1814-15, when Grundtvig and H.C. Ørsted had a major intellectual debate concerning faith and science. H.C. Ørsted issued the booklet *Against the Big Accuser* August 1814, followed by Grundtvig's rejoinder, *Against the Little Accuser* from June 1815.¹

Ørsted was a Christian natural philosopher, who argued for a sympathetic harmony between faith and science while insisting on science as an independent inquiry within its own domains. Christian faith cannot and should not control empirical investigations and the search for laws of nature. At the same time, Ørsted pursued an apologetic agenda when referring to contemporary trends that seek to "find back to a renewed belief as well as to a higher knowledge," after reason had been driven beyond its proper domains in the earlier Enlightenment era. With this understanding, Ørsted presents Grundtvig as a Don Quixote out of tune with his time, who even had "a hideous character as author, fully devoid of love."^{li}

Grundtvig, on his side, fought for what he at the time understood as the correct Biblical worldview. In his *World Chronicle* from 1812, for example, he criticized the French Enlightenment with its emphasis on a chemistry that dissects the human body in disregard of the spiritual nature of humankind, and with an astronomy that only looks out for proximate causes while excluding divine providence as the deeper cause of things.^{lii} The kind of pantheism exemplified by Schelling and his Danish consorts was not doing any better.

The conflict could not be settled on the premises of the opponents. On the one hand, we have Grundtvig who in this phase of his life judged history from a Biblical perspective and wished to subsume the sciences under a theological worldview. On the other, we have H.C. Ørsted who argued for a harmony of faith and knowledge mediated by a comprehensive Romantic philosophy. Beneath the debate, however, we see a battle for winning the audience. Which audience? H.C. Ørsted wrote for the cultural elite: "[B]y 'people', I understand the more educated part of the people, the reading people, if I may say so..."^{liii} Grundtvig had not yet found his audience but his concept of 'people' was decisively broader, in this early phase aimed at ordinary Christians but later extended to the Danish people at large.

5. State law as protector of true Christianity? Grundtvig and A.S. Ørsted 1825-26

In 1825-26, we see the first contours of a rapprochement between Grundtvig and A.S. Ørsted, though still without finding a common cause. The occasion was the aforementioned conflict between Grundtvig and H.N. Clausen.

H.N. Clausen was a follower of the Berliner theologian Friedrich Schleiermacher (1768-1834), the main theological architect behind the establishment of the *United Protestant Church* in Prussia 1822. Like Schleiermacher, Clausen saw a fundamental difference between the essence of Catholicism and the spirit of Protestantism. While the former rest on Church authority (the Church being the mediator of Christ), the latter builds on the individual relationship to Christ, as attested in the Bible. For the former, the Church is the precondition of the individual relation to Christ; for the latter, the faithful relation to Christ is the precondition for being member of the church.^{liv} From Schleiermacher Clausen took a combination of a contemporary interpretation of the Bible with an emphasis on Protestantism as based on personal piety and religious feeling. Accordingly, Clausen's *Catholicism and Protestantism: Their Church Order, Doctrine, and Ritual* from 1825^{lv} assumed only a minor difference between Calvinism and Lutheranism. Inspired by Calvinist tradition, Clausen argued for giving the Danish church a synodal order with its own internal legal structure.

The deeper theological reasons for Grundtvig's strong reaction in *The Church's Retort* is on this background understandable. Grundtvig could not accept Clausen's attempt to divide the Church into Catholics and Protestants, for all Christians are baptized on the same Apostolic Creed. Grundtvig's "Church View" of 1825 was thus an argument for the continuity of the "Table and the Font" in the long Christian tradition despite later theological and cultural divisions. Furthermore, the living Word of Christ in the community (not scripture) constitutes the Christian church over its ages. Grundtvig begins to see the Bible as a word of enlightenment, the "Light-Word" (*Lys-Ordet*), whereas baptism and the Eucharist bring "the life-Word" (*Livs-Ordet*) of Christ, who constitutes the Christian church. Moreover, the scriptures are open for all Christians, not for the elite only. According to Grundtvig, the result of Clausen's view would be the erection of a new "exegetical papacy," in which any faithful reading of scripture would have to go through the interpretative filter of self-designated church teachers. If theologians at the university (and the rationalist pastors influenced by them) were given the right to interpret the Bible as they wanted, ordinary Christians would become slaves to such interpretations. Grundtvig, who in this period insisted on the pastoral oath, wanted to protect the congregations from the exegetical papacy of what he saw as unchristian teachers.

When Clausen sued Grundtvig for libel, Grundtvig refrained from appearing in court, and continued his own writings. One of Clausen's supporters, professor of Danish law at the University of Kiel, Christian Paulsen, publicly called on A.S. Ørsted to stand on Clausen's side in the conflict.^{lvi} Christian Paulsen argued that the government (including Ørsted) had already supported a space for a charitable interpretation of the pastoral oath, based on a pastoral letter issued by the bishops in 1817. This letter said that even though the Bible was the final authority, it needed a pastoral interpretation of its essentials; pastors were free to interpret the Augsburg confession or any of the old confessions in the same spirit too. Paulsen therefore argued that Clausen, from a legal perspective, had to be vindicated against Grundtvig.

At this point, Ørsted decided to publish his understanding of the case, and did so in two long articles in *Juridical Journal* under the title, "Is the Danish Church Order in Need of a Thorough Revision?"^{lvii} Ørsted's answer was in the negative but he expressed his admiration for Clausen's

book: “In this book the central tasks of ecclesiastical law are treated with insight, with a love for substance, and with a boldness that can only awaken the dormant interest in these important concerns.”^{lviii} He also praises Clausen’s circumspective deliberations, and even though Clausen’s view should be received with “much and warm criticism” in view of the hot topic, it should not have been “impeded by a bitter shouting warfight”^{lix} – no doubt an allusion to Grundtvig.

Ørsted thus sides with Clausen on the need for giving room for interpretations of the basic doctrines of scripture in general, and the pastoral oath in particular. For even though any religious association must have “firm basic doctrines” (*faste Grundlærdomme*), the evangelical-Lutheran confessions themselves state that only scripture has independent validity (*norma normans*), while the confessional documents are to be interpreted in light of scripture, hence they are *norma normata*.^{lx} In this context, Ørsted is also referring with consent to Schleiermacher’s work on the meaning of the symbolic books. At the same time, Ørsted alludes positively to Grundtvig’s position when referring to the Apostolic Creed as being used at baptism since the oldest time of the Church, adding (against Grundtvig) that the Creed “as generally known, does not go back to the apostles themselves.”^{lxi}

Ørsted thus stands behind Clausen’s emphasis on a liberal interpretation of the symbolic books – at least for pastors. On another issue, however, Ørsted took issue with Clausen. At some length, Ørsted points to the many practical problems of Clausen’s proposal to develop the Danish church as an independent association within the state. If there were to be established an internal church law, there could well be a lack of legal competence within the church, whereas the government, within the present order, always asks the bishops and others for theological advice. Clausen’s idea of church-government (*Kirkeregjering*), is not only legally unclear but potentially one of the most devastating (*fordærligste*) steps to take. A moral and religious church-government, led by pastors and presbyters, would easily infringe the innermost personal and social zones of church members. “Professor Clausen seems all too easy to have calmed down the fear that such a church regiment could promote hypocrisy.”^{lxii} Referring to the experiences with Calvinist presbyters, Ørsted concludes that discipline in matters of faith rests better in the hands of professional lawyers.

Within the royal court, Ørsted’s publication was seen as an interference in a pending court case. Moreover, Ørsted’s superior in the royal government, Fr. Jul. Kaas, wanted to enforce the allegiance of pastors to Lutheran orthodoxy, while Ørsted found that pastors should the essentials of the Christian faith, particularly Christian love. Pastors should not be literalists but “stay away from dogmatic conceptions that either are of no avail for the living Christian faith and the pious mind, or could even confuse their emotions.”^{lxiii}

Ørsted’s intervention was thus not only a plea for pastoral freedom but also a concern for the piety of everyday Christians. To Ørsted, the use of reason in religious life is not an enemy of the Christian faith. Rather, “the insight won by the effort of reason leads exactly to the awareness that all treasures of wisdom and higher understanding are contained within the Gospel”.^{lxiv} Ørsted thus assumed a full congruence between the laws of universal reason and the fundamental commitments of the Christian faith. In a personal letter to Julius Kaas, Ørsted is particularly outspoken about the need to administrate the church in a context-sensitive manner. “If the idea of Devilish influence on human beings, of eternal Hellish punishment, and of the subtle definitions on the doctrine of the Trinity in the Athanasian symbol be as holy as the gospel of the eternal Love revealed in Christ, the

Son of God and the savior of the world, then there would not be 10 orthodox pastors in the whole country”.^{lxv}

In his 1826-article, Ørsted was faithful to his general legal method: The inherited laws should be interpreted in the contemporary context, based on an understanding of the essential content of the confessional documents, the current situation, and the general opinion among leading public figures. In Ørsted’s view, decisions on orthodoxy should not be taken by over-eager theologians nor by court decisions but by a wise administrative government, which listens to the best advice of jurists and theologians. Ørsted thus suggested a third way between Clausen and Grundtvig: a historically informed, open-minded, and pragmatic state-governed interpretation of church laws.

Grundtvig was anything but a pragmatist in 1825-26. He believed that pastors in the Danish church should abide to their pastoral oath, his main concern being the full commitment to the Apostolic Creed. At this stage in his development, he understood the state church as a protector of the confessional nature of the Evangelical-Lutheran church. While he was in broad agreement with Ørsted on the protective role of the state vis-à-vis the Danish Church, Ørsted and Grundtvig disagreed about the method. Strict observation of the creedal commitment of pastors versus a more lenient practice with a room for interpretations of the substance of the confessions – this was the dividing issue between Grundtvig and Ørsted in 1826.

Perhaps surprised by the legal aspects of the Clausen-debate, Grundtvig replied with a new publication under the title, *Important Questions for Denmark’s Jurists*. In this rarely discussed booklet (published September 2, 1826, that is after the first part of Ørsted’s 1826-article but before the verdict on Grundtvig on October 30, 1826), Grundtvig addressed Ørsted directly. Initially he expressed his regret that Ørsted favored Clausen in (the first part of) his 1826-article. At the same time, he expresses the conviction that he and Ørsted in reality are “basically in juridical agreement, even though our tendencies, regarding the application of law, drive us to divergent sides.”^{lxvi} As put by Grundtvig: A “theologizing jurist” who knows of the importance of religion in all spheres of life should be able to meet half-way with a “historicizing theologian” who knows of the importance of law for the life of a people.^{lxvii}

The critical question underlying Grundtvig’s appeal to Ørsted can be rendered as follows: if Clausen were to be proven right at court, how then will the state ensure the freedom of religion for old-fashioned believers and orthodox pastors like Grundtvig himself? With this problem in mind, Grundtvig develops an early proposal for freedom of religion in the form of eight questions. (1) Can a civil servant be judged for libel, when he is only performing his service? No! (2) In particular, can a pastor be sued for libel, when he performs his proper task as a defender of true Christianity, a duty stated in his pastoral oath? If so, the state should change the oath!^{lxviii} (3) Is it correct that the obligation for pastors to defend true Christianity has been central in Danish law since 1660? Yes! (4) Is it not the case that Lutherans following the Augsburg Confession have a right to religious freedom within the Kingdom? Definitely so, and if they are not allowed to exist within the state church, such Lutherans should be tolerated outside of it! (5) Is it beneficial for any state that pastors are not obliged to follow a certain confession, and is it the case that pastors within the state church are their own lawgivers regarding church doctrine.^{lxix} No! (6) In the given situation, is it foreseeable that the people of Denmark wants to follow the Lutheran faith, or do they prefer another faith? This is a question for the state itself, since “no state can afford to resist the spirit of the people (*Folke-Aanden*) in matters of faith.”^{lxx} (7) If this is so, why can teachers of religion (that is, Clausen) be

against the Lutheran confession, and remain in their office? (8) In that case, at least, the state should by law open up for the possibility that old-fashioned Lutheran Christians separate themselves from the Danish church. In view of such impending “church divorce” (*kirkelig Skilsmisse*), Grundtvig argues for issuing “a general freedom of religion” (*en almindelig Religions-Frihed*) as the only possible political solution.^{lxxi}

Such solution was unthinkable by 1826, though. Nobody wanted a church division, and freedom of religion was only later secured in the Constitution of 1849. We observe, however, a new social self-confidence in Grundtvig. He (and not Clausen and his likes) represents the Danish people. “The old faith was after the heart of the people,” he writes, and if religious freedom was given, “I don’t think I would miss any listeners even in an empty barn, but I really believe that the modernizing pastors would have an even smaller audience than they have now!”^{lxxii}

There is something contentious about Grundtvig hammering out his self-defense in juridical terms. Nonetheless, Grundtvig really does seem to share two social understanding of public religion with the theologizing jurist, A.S. Ørsted. The first is the need of the state to stay in contact with the cohesive force of popular religion. The second is Grundtvig’s reference to the inherited Lutheran confessions, in contrast to Clausen’s vision of a Protestant amalgam of Lutheranism and Calvinism. In these issues, Grundtvig wanted to persuade Ørsted that they were allies, and to some extent they were.

This comes forth in the second part of Ørsted’s 1826-article, in which he gave a brief response to Grundtvig’s booklet of September 2, 1826. He states that he of course could not interfere in a pending court case (only settled later, on October 30, 1826). This statement must have had some personal urgency for Ørsted, since it was a delicate. For between the first and the second part of Ørsted’s 1826-article, he had received the royal reprimand dated August 2, 1826, in which the king forced him to choose between his scholarship and his royal position.^{lxxiii} This royal letter, painful as it was for Ørsted, was not publicly known, however. Ørsted therefore responds to Grundtvig that he has neither sided with Clausen in the court case, nor does he have any personal reservations against Grundtvig. Rather, given the goodness and benevolence that Grundtvig had showed him in the booklet, and at earlier occasions too, Ørsted expresses his goodwill for Grundtvig as well. Yet, “*magis amica veritas*”: truth is more than friendship.^{lxxiv} Ørsted does not agree with Grundtvig’s strict position on the pastoral oath, but he assures him that he takes the confessions very seriously, also from a legal point of view. In Ørsted’s view, a teacher of religion would be in serious trouble if he does not teach on the Eucharist in accordance with the Augsburg Confession article 10 (regarding the real presence of Christ). However, later Lutheran conflicts, such as the allegation against Melancthon’s students for being crypto-Calvinists, is not part of Danish church law. Ørsted is thus convinced that Niels Hemmingsen would not have been declared a heretic in the contemporary situation—hereby probably alluding to the parallel between the Calvinizing tendencies in Hemmingsen and Clausen. Another example is the doctrine of the Trinity, which belongs to the basic teachings of Christianity. Ørsted assures Grundtvig that he holds this doctrine in the highest regard, and emphasizes its simple and pious use in biblical references to the mystery of Father, Son, and Holy Spirit. What he has questioned is only the binding character of the philosophical subtleties of the Nicene, and of the Athanasian symbols in particular.^{lxxv} This response by Ørsted to Grundtvig can certainly be read as a friendly and accommodating concession

to Grundtvig. Yet it can also be read as a defense of Ørsted's stance in confessional matters vis-à-vis his critics within the royal court.

6. The “age of the people” and the freedom of religion

In the period from 1830 to 1850, the Danish society was transformed from the age of segregated and hierarchical estates (clergy, nobility, peasantry, citizenry) to the age of the people. Grundtvig was particularly aware of this transformation: “The Age of the Estates is over, now is the Age of the People!” he exclaimed in 1849.^{lxxvi} In Grundtvig's view, this transformation required a new education of the Danish people as well as a broadening the rights of freedom. In what follows, we focus on four aspects of freedom of religion.

Freedom within the Danish Church.

After losing the libel case to Clausen in 1826, Grundtvig stepped down as pastor and gave up his hope that the state would protect a creedal ‘old-fashioned Christianity’. He first focused on developing his ideas on freedom of religion, based the English model of having a state church whilst allowing freedom of religion for others.^{lxxvii} Grundtvig went further, though. In *An Impartial View of the Danish State Church* from 1834, he developed the idea of the state church as a roomy comprehensive church capable of accommodating both old-fashioned Christians and rationalists such as Clausen.^{lxxviii} The established church was to be seen as a legal framework around local communities. Accordingly, members of the state church should have the right to follow the pastor they wanted also outside the local parish. Grundtvig suggested this idea of loosening the parish tie in 1838 but was rejected. In 1855, however, after the Constitution had been adopted, the option of breaking with the parish tie was finally put into law. Ever since this has been a central dimension of Danish ecclesiastical law.

Following the same way of thinking, Grundtvig changed his earlier strategy and now argued for a freedom for the pastors to interpret Christianity according to their own Christian convictions, under the provision that they receive a calling from a significant number of congregational members.. However, a freedom from confessional commitment has never been established within the Danish church. On the contrary, the pastoral oath of committing to the Bible and the Lutheran confessions was renewed in 1872, and is still in force.

A less known dimension of Grundtvig's views of freedom is his suggestion that pastor should be allowed to deny baptism and access to the Eucharist for church members, which the pastors found insincere. Such members should find another pastor to take care for them; an exclusion from a local congregation should thus not imply an exclusion from the Church. H.N. Clausen happened to agree with this view, based on his understanding of the Church as an independent association. Ørsted, however, in collaboration with the bishops, rejected the idea entirely.^{lxxix} The state must protect the right for every individual citizen to belong to the church in his or her local parish. Rules on exclusion are not possible, neither within the state church nor within the People's Church. This has been the position of the Danish church ever since.

Conflicts with revivalist movements

In the years after the conflict of 1826, Ørsted remained the liberal voice within the state administration, even at times where a majority of members in the government wanted to strengthen Christian obligations in society.

Revivalist movements had long been under surveillance by the state. A regulation from 1741, *Konventikelplakaten*, forbid lay people to meet in private for Bible reading without pastoral attendance. Now revivalist groups wanted to meet on their own; they also wanted to use the old hymnbook from 1699 with pious addendums from 1740 instead of later rationalist hymnbook, authorized by the king in 1778 and 1798; finally, they refused to replace Erik Pontoppidan's pietist catechism, *Truth into Piety* from 1737, by bishop Balle's more rationalist catechism from 1791 in the school teaching of their children.^{lxxx}

As we saw above, Grundtvig supported the revivalist lay movements as early as 1825 on the understanding that they were fellow Christians. Ørsted, too, argued for more tolerance and freedom of religion, though in particular to foreigners. Ørsted had been a leading force behind offering the Jewish population in Denmark Danish citizenship in 1814,^{lxxxi} and he now emphasized the privileges given to the Reformed congregations in 1685.^{lxxxii} The new king, Christian VIII (r. 1839-48), ended the persecution of the revivalists movements in a royal letter of 27th October 1840 to the bishops; the priests should only use spiritual guidance, not enforcement towards these groups. Eventually, the revivalist movements mostly remained within the Danish church, in some contrast to the situation in the Church of Sweden.

Enforcement of children's baptism

For a long period, however, the government underlined the obligation of all citizens (apart from the Jewish citizens) to baptize their children. Believing that a Christian state is responsible for taking care of religion, a regulation concerning infant baptism was issued in 1828, which set up deadlines for informing the priest and for baptizing the infants.^{lxxxiii} Since 99.5% of the population belonged to the national church, this did not lead to immediate obstacles.

Obstacles, however, appeared with the first re-baptism of a group of adults in Copenhagen on the 30th October 1839. 267 persons were re-baptized over the subsequent five years, and new Baptist congregations were formed in different parts of the country.^{lxxxiv}

Using his position within the government, Ørsted suggested that the Baptists be allowed to stay within the church, and to postpone the baptism of their children until the age of 14.^{lxxxv} He proposed, too, that they be allowed to come together for religious discussions (though without any proselytizing). Finally, Ørsted argued that legal solutions should be based on dispensations given by the government to the individual Baptist groups. The government, however, did not allow the children of the Baptists to remain unbaptized up to the age of adulthood. Instead, a new regulation of 27th December 1842 ordered the vicars to enforce the baptism of the children, and recalcitrant parents were sent to jail together with Baptist leaders.

In his memoirs, Ørsted mentions the regulation on baptism from 1828 and the regulation against the Baptists from 1842 as two highly regrettable decisions during his period as a member of the central administration. He also reminds his readers that both regulations were issued during his absence in Norway and Schleswig. He would have decided differently.^{lxxxvi}

Grundtvig, in agreement with Ørsted on this matter, turned sharply against the religious persecution of the Baptists. After his travels to England, Grundtvig believed that the Danish people would remain united, even though there were religious differences within the people. Grundtvig took the principal position that any “[r]eligious persecution contradicts the Christian faith and Creed as well as the Augsburg Confession,” adding that “persecution only increases division and disagreement in the kingdom”.^{lxxxvii} Accordingly, he suggested that Baptists should remain within the state church, and be allowed to postpone the baptism of their children until their coming of age.

Grundtvig and Ørsted thus agreed concerning the result but differed in method. Grundtvig understood religious freedom as a right, whereas Ørsted preferred to build on dispensations, based on a tolerant interpretation of the old laws. Eventually, the regulation of 1842 was withdrawn in 1847, but the problem was only solved with the clauses on freedom of religion in the Constitution of 1849. The obligation for members of the Folk Church to baptize their children was repealed by a law of 1857.

Catholic legislation in the country?

A final case regarding Catholicism shows the dilemmas in the late absolutist government between freedom of religion versus the wish to keep unity within the laws of the country.^{lxxxviii} Ørsted’s argument was that citizens in Denmark formed an Evangelical-Lutheran people, unlike American citizens who were a conglomerate of many different peoples each with their own faith. In this context, Ørsted referred to the Norwegian constitution of 1814 where the Evangelical-Lutheran faith was identified as the public religion of the state. Ørsted suggested that people who confessed to foreign religions ought to have their religious freedom.

In 1839, the Pope had installed a new bishop to be the leader of Catholic missionary work in the Nordic countries, assuming an episcopal jurisdiction for Roman-Catholics in Denmark, too. With Prussian support, Austria appealed to the Danish king for recognizing this fact. From a Danish perspective, however, such recognition would imply that Danish Catholics should follow Catholic marriage laws, for example, rather than Danish law.^{lxxxix} The king and the government strongly reacted against such possibility, as they could not accept that a Roman-Catholic bishop has any jurisdiction over Danish citizens. Already in the regulation of Jewish citizenship, as well as in the discussion with the Baptists, freedom of religion did not open for allowing independent religious laws in the country. The law of the land had to be followed. This had been Ørsted’s view, too, when he discussed freedom of religion in 1826. Regarding the Catholic question, he therefore proposed to the king to accept the function of the Catholic bishop in Hamburg, but without acknowledging any Catholic jurisdiction. Accordingly, the government ordered the Catholic bishop to follow the law of the land in his supervision of Danish congregations.^{xc}

7. Law and religion in the constitutional discussions 1848-49

Ørsted and Grundtvig met again, and this time face to face in the constitutional assembly of 1848-49. They were among the main participants in the discussions concerning the clauses on state, church, and religion in the Constitution.^{xci}

The first discussion concerning religion related to the role of the King in the new constitution.^{xcii} All participants in the discussion, including Ørsted and Grundtvig, agreed with the government on the clause still in force, according to which the king must be a member of the Evangelical-Lutheran church.

It was generally agreed too that in these times of transition, freedom of religion was central. The chair of the constitutional committee, C.C. Hall, even suggested, there be no discussion concerning the freedom of religion clause (now article 67): “It might politically be an advantage for a state, if the citizens shared their religious conviction; it is however an even higher fortune, if this shared conviction is based on persuasion, and not on force. It is therefore neither in the interest of the state, nor of the majority religion, to enforce religious unity. Freedom of religion is the most holy principle of all.”^{xciii}

In the discussion on religious freedom, Grundtvig suggested that all clauses on church and religion should take their point of departure in the principle of freedom of religion.^{xciv} The government, by contrast, argued that only the People’s Church be mentioned in the preamble of the new constitution, since it belongs to the founding elements of the nation^{xcv}

The constitutional committee proposed a confessional identification of the People’s church. Grundtvig initially argued that the church should be simply designated as the majority church, without any strict confessional identity, in order to ensure freedom for both priests and church members within the church. Rather early in the negotiations, however, Grundtvig accepted the Evangelical-Lutheran identification of the People’s Church.^{xcvi} In line with Grundtvig, a minority in the constitutional committee proposed a dissolution of the parish tie in the constitution itself, but the majority found that such concrete proposals were to be decided by law, not by constitution.^{xcvii}

The consensual result was that the Evangelical-Lutheran Church was dubbed the Danish People’s Church, which as such was to be supported by the state (§ 3, today § 4). Members of the assembly agreed that this support was to be interpreted in both spiritual and economic terms. A major debate, however, concerned whether the content of this support should be decided in the Constitution itself. The representatives from the peasants (who paid for the church through tithes) proposed that no limitations should be preset in the constitution; rather, it should be left for the legislative powers to decide the extent to which, and how, the state should support the church in the future. A.S. Ørsted, on his side, proposed a rather strong bond on future legislative powers. According to his view, the Evangelical-Lutheran religion, based on the Augsburg Confession, should be taught and practiced everywhere as the public religion of the country, supported by the existing church property that should be protected by constitution.^{xcviii} Grundtvig, in opposition to Ørsted and in support of the peasants, found that “no such ideas as a constitutional protection of church property ought to be formulated.”^{xcix} Ørsted’s proposal was rejected by the majority of 87 against 33.

The constitution still today includes the so-called “promissional paragraph” that a church order for the People’s Church will be provided for by statute (§ 80, today § 66). H.N. Clausen, bishop Mynster, and D.G. Monrad were proponents of establishing an internal jurisdiction within the church. Grundtvig disagreed and supported the representatives of the peasants who were strongly against any such idea: “We do not want a double constitutional assembly in this country”, argued A.F. Tscherning, and one of his fellow representatives from the peasant party, I.A. Hansen, added that “the proposal must be derived from a Catholic concept of the church” – not exactly a

recommendation.^c H.N. Clausen wanted a principal distinction between a political representation and a representation of the church, which would add a different kind of wisdom of which the farmers, according to him, had no real idea. It seemed as if these clarifications were anything but helpful for the governmental case, since the proposal was rejected with 68 votes against 58.^{ci} This is the only case, where the peasant's representatives had a clear success in voting against the church hierarchy at the assembly. They might have found it too provocative that they were found good enough to pay for the church, but not wise enough to decide over the church that they paid for. They wanted to establish ordinary legislative powers over the church, with no exemptions.

Regarding the issue whether to ensure religious freedom directly in the constitution, or rather leave the decisions to the legislators to come, the positions were turned around. Ørsted proposed that all rules be left over to the legislation to come, whereas Grundtvig took a strong stance for placing the freedom of religion at a prominent place in the Constitution.

Ørsted held a long speech against placing freedom of religion directly in the constitution. His concern was about retaining a shared legal order for Danish citizens. What about marriage laws, registration of births, and what about funerals? He uttered, too, a concern for the moral and public order of the state. If there were no limitation to freedom of religion, any preacher could argue publicly for "treason, perjury, the infringement of private property, or any criminal act."^{cii} He therefore suggested that only one rule was to be formulated in the constitution, namely that rules on religious bodies dissenting from the established church shall be laid down by law.^{ciii}

Ørsted also argued against the view that freedom of religion implied no discrimination in relation to civic rights and duties.^{civ} Ørsted saw no problem in a full freedom of religion at private level, but "one should not allow a public exercise of any confessional doctrine, unless it was made known to the state beforehand, and placed under the supervision of the state"^{cv} New sects should only be given rights based on acknowledgement from the government. Ørsted even argued that it would be "scandalous if a Jew could become a judge" and that neither Jews nor Catholics should have access to become civil servants, such as teachers and religious instructors.^{cvi} No, such rules should not be adopted in the constitution.

In matters of freedom of religion we see the starkest contrast between Ørsted and Grundtvig. The latter reacted immediately, as the next speaker. What Ørsted just proposed is exactly as it has always been said in the Danish state administration for the last 50 years, Grundtvig rejoined: General arguments for formal freedom, but in the end no real freedom was granted. Grundtvig could allow distinctions with regard to foreigners but "[t]he Danish man must be equal in all matters."^{cvi} Moreover, it will always be arbitrary, when civil servants, who do not hold the same belief, evaluate the religious teachings of others. Such administration will inevitably lead to unfair limitation of the freedom of religion.^{cvi}

In the end, Ørsted gained the majority for a rule that sets limits to freedom of religion in relation to preaching as well as deeds against good morals and public order (§ 81, today § 67). Grundtvig, however, gained the majority for placing the principle of freedom of religion in the Constitution itself. He also won the majority for the general rule on a non-discrimination based on religion (§ 84, today § 70).

In constitutional thinking, one notices a general battle line between constitutionalism versus a government that proceeds by continuous law-giving. It has been argued that Grundtvig represented a critical attitude towards constitutionalism as a formal political idea, insofar as he always argued that the heart of the people is more important than the written constitution.^{cxix} In the constitutional debate, however, we have seen Grundtvig in favor of ensuring the freedom of religion through constitutional clauses, whereas Ørsted preferred legislation. Regarding the legislation of the national church, the positions were somewhat different, as Grundtvig and the peasant's party did want to inscribe a constitutional right to an independent Church order. It had to be settled by subsequent law, as stated in the so-called "promissional paragraph" of the Constitution, § 80 (today §66): "The constitution of the People's Church will be ordered by law."^{cx} Such constitution has never been effected, much in line with Grundtvig's and Ørsted's views on the future of the People's Church in Denmark.

8. Grundtvig and Ørsted's legislative positions after 1849

During the 1850s, the parliament put into law central parts of Grundtvig's program for freedom of religion and freedom within the church. Already in 1850, a law was proposed which aimed at dissolving the parish ties in order for the people to choose themselves where to worship, where to get their children baptized and confirmed, where to marry and be buried, while also allowing for a civil marriage.^{cxix} Grundtvig, having supported this proposal as part of the Constitution, naturally supported this proposal warmly. The idea was to dissolve any link between religious sacraments and services on the one hand, and civil consequences on the other. The first legal result was that couples, who did not belong to any acknowledged religious community or belonged to other religious communities, received the right to be married by a city mayor. The parish tie for members of the People's Church was, as mentioned, dissolved by law in 1855. Finally, in 1857, also the obligation of members of the People's Church to baptize their infants, was dissolved by law.^{cxii}

In 1868, further legislation allowed for the establishment of free congregations associated with the People's church. Even so, the question remained about the status of religious communities outside the Evangelical-Lutheran Church. Thus, no legislation existed when the Methodist Church applied for and received state recognition in 1866. According to the constitutional thinking at that time,^{cxiii} such decisions might have been understood as a matter for parliamentary decision. Now, however, the chair of one of the parliamentary chambers, A.F. Tscherning, proposed that such cases be decided by the government, without any particular legislation, a path followed until recently.^{cxiv} Recognition of religious communities was not a matter for parliament, but a case for the administration within the Church Department (*Kirkeministerium*) of the government.^{cxv}

Grundtvig generally took a 'rule-of-law' position as his basic approach to the function of the legislator. He did not argue for equality in all matters, apart from equal access to public functions in the democratic state. Rather, he focused on freedom in all spiritual matters, including not only religious affairs, but also regarding education, where he was a strong proponent for the possibility of establishing free schools as an alternative to the schools, established by municipalities.^{cxvi} Having himself suffered censorship, he worked for a free press and for a material, and not just a formal, freedom of expression.

Grundtvig also wanted the influence of the civil servants to be limited.^{cxvii} On the one hand, he wanted to ensure that the government could not lawfully discharge civil servants (or move their service to another part of the country), due to their political views. On the other hand, Grundtvig curiously did not support that the state ensured pension rights for civil servants. As for judges, Grundtvig believed that their economic protection should not be higher than for other citizens.

Grundtvig was among the first to suggest that members of government should be legally bound by law, without having immunity.^{cxviii} Public transparency should be extended to the administrators of justice, so that no one was above the law.^{cxix} In the same spirit, he strongly spoke for the right for the courts to ensure a judicial review, that is, to ensure that an issuing of laws is not in conflict with the constitution.^{cxx} Ørsted, on his side, was against any attempt to place the courts at a higher level than the government, and therefore voted against the constitutional rule (§ 77, today § 63), that opens for a judicial review.^{cxxi}

Politically, Ørsted can be described as a liberal during absolutism and as a conservative during the early phase of democracy. Like Grundtvig, he focused on the long history and of the people as the spirit of the constitution.^{cxxii} In national politics, both before and after 1849, Ørsted was a strong defender of the monarchy and of keeping the kingdom together, including Schleswig-Holstein. The Constitution of 1849 was formulated and adopted during the 1848-1850 war against Prussia and Austria on the future of the duchies of Schleswig and Holstein.^{cxxiii} The peace with Germany did not last long. Regarding the duchies, Ørsted tried his best to solve the problems as a Prime Minister April 1853-December 1854, but without success. When the government was dismissed, Ørsted, now aged 75, left public life, leaving him time to publish the two remaining volumes of his memoirs, which appeared in 1855 and 1857.

We have seen how Grundtvig over time changed his views on the role of legislation, not least concerning religion and the confessional nature of the People's Church. He changed his views on democracy too. In the 1848-49, he was still hesitant about democracy, trusting the union between the King's decisions and the people's voice more than a formalized parliamentary system. However, he took eagerly part in the constitutional discussions, as we have seen, and in 1866, he stood up for the people's influence and the liberal orientation of the 1849-constitution. His basic argument was that "experience teaches us that no government, especially in our day, can succeed and thrive without having the people's voice *behind* it."^{cxxiv}

9. Conclusion: Two roads towards convergent solutions

A.S. Ørsted and N.F.S. Grundtvig represent two different roads into and out of the Romantic turn in the 19th century Danish society. Parts of their disagreements had to do with different experiences of academic study in their youth as well as with different views on the legitimacy of law in the wider society. Their agreements and disagreements are probably easier to track retrospectively than it must have been for their contemporaries. Already by 1826, Grundtvig had the impression that they were in deeper agreement than they seemed to be, insofar as both worked for a more liberal understanding of the use of law in the late epoch of absolutism. In *Important Questions to the Denmark's Jurists*, Grundtvig appealed to a "later generation to find out, why the theologizing jurist and the historicizing theologian, whom one would have thought could have met friendly half-way,

instead had confrontations and then walked apart”.^{cxxv} On the front page of the same publication, Grundtvig even – in an opening appeal to Ørsted – put a saying by the German poet-philosopher Schiller: “The laws are still covered in the future. But this will be revealed before we depart from one another.”^{cxxvi}

Ørsted introduced a new legal method, practically oriented, at once based on a deep historical knowledge about the laws and their preparations and combined with extensive information about contemporary issues in life and society. A circumspective argumentation by the practicing jurist stands at the center of his method. Grundtvig too came to argue for a more pragmatic understanding of the laws of a nation, related to the particular spirit of its people. Deeply inspired by his three visits to England in 1829-31, he learned to see the concept of “common law” as contrary to an externally imposed state authority. Arising out of these English experiences came his later conviction that the commoners – the people itself – should become the legislators, and that jurists should interpret and apply the laws accordingly.

Grundtvig has rightly been described as conservative, who became a liberal.^{cxxvii} For him, freedom should be put in the service for the common good, if it is not to be destructive, as it happened in the French revolution.^{cxxviii} For Grundtvig, it was the responsibility of legislators to put the freedom rights into the constitution. However, it was up to the individual person and to the social communities of to ensure that freedom was materialized. Ørsted, by contrast, was a liberal who became a conservative.^{cxxix} Already in his 1807/1813-article in *Eunomia* he realized that the revolutionary freedom of his youth needed to be revised in order to accommodate broader moral and religious concerns, and he was convinced that the coherence of the state depends on the religious norms articulated through the state church. Unlike Grundtvig, Ørsted did not change his basic views over time, but since the world had changed in the meantime, he appeared ever more as a conservative.

Despite their different ways through life, Ørsted and Grundtvig – sometimes in tandem, sometimes in conflict – contributed significantly to the legal contours of the People’s Church in Denmark, and of the clauses of freedom of religion in the Constitution of 1849 – views and practical solutions that are still today operative in the Danish regulation of law and religion.

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ⁱ The Danish Constitution was revised in 1855 and 1866, and again in 1915 (securing election rights for women) and 1953 (extending the Constitution to Greenland, and securing equal female succession to the throne).

ⁱⁱ The clauses on the Evangelical-Lutheran church are unchanged. In the religion clauses, 'race' is added in § 84 (now § 70) ensuring equal treatment of all citizens, regardless of faith *and* race. A rule, obliging citizens not belonging to any acknowledged religious community instead to pay an amount similar to the church taxes to the university, was deleted at the change in 1915. Apart from these minor changes, the constitutional clauses on religion are unchanged since 1849. The religion-clauses are now in § 4, 6, and 66-70.

ⁱⁱⁱ The Danish Constitution of June 5, 1849, § 3 (today § 4): "Den evangelisk-lutherske Kirke er den danske Folkekirke og understøttes som saadan af Staten." "Folkekirke" is sometimes rendered in English as "Folk Church."

^{iv} Draft by June-July 1848 by the minister of culture and church (*Cultusminister*) D.G. Monrad: "§1b: Den lutherske Kirke er som den, hvortil den overvejende Deel af Befolkningen bekjender sig, at ansee som den danske Folkekirke og er berettiget at nyde Understøttelse af Staten," quoted from *Beretning fra Forhandlingerne paa Rigsdagen 1848-1849*, [Transcript of the Negotiations in the Constitutional Assembly], Copenhagen: Bianco Luno 1849, vol 2, col. 1529.

^v § 6: "Kongen skal høre til den evangelisk-lutherske Kirke."

^{vi} Ørsted, Grundtvig, and the government shared this position as expressed by bishop Mynster, *Beretning*, col. 1599: "Folk og Konge maa være sammensmeltede, at Kongen er ægte dansk; men dertil hører, at han ikke maa bekjende sig til nogen anden Religion end den, til hvilken den langt overveiende Fleerhed af Folket bekjender sig."

^{vii} H.A.M. Snelders, "Ørsted's discovery of electromagnetism". In *Romanticism and the Sciences*, eds. Andrew Cunningham and Nicholas Jardine, Cambridge: Cambridge University Press 1990, 228-240. In his late work, *Aanden i Naturen* (1849-50), H.C. Ørsted spoke of a divine reason in nature exemplified in the laws of nature: "The laws of nature in the material world are laws of reason, revelations of a rational will... Soul [Spirit] and nature are one, seen from two different sides: thus we cease to wonder at their harmony" (trans. *The Soul in Nature*, London 1852, 384). We will find similar ideas in A.S. Ørsted regarding human laws and universal reason.

^{viii} There is very little literature on A.S. Ørsted in other than Nordic languages. Franz Dahl's biographical overview from 1927, written in order to rehabilitate his name, is published in English: *Anders Sandøe Ørsted as a Jurist*, Copenhagen 1932. The central research monograph on A.S. Ørsted is Ditlev Tamm: *Fra 'Lovkyndighed' til 'Retsvidenskab'. Studier over betydningen af fremmed ret for Anders Sandøe Ørsteds forfatterskab*, København: Juristforbundets forlag 1976; Tamm focuses on the impact of foreign law in Ørsted's development of private law, with a general introduction to life and scholarship (13-41). Jørgen Dalberg-Larsen: *Retsvidenskabens som samfundsvidenskab*, København: Juristforbundets Forlag, København 1977, discusses Ørsted's development of legal research in general (219-250) in the context of developments of English (Bentham) and German (Savigny) legal scholarship. Lars Bjørne, *Den nordiska rättsvetenskapens historia*, Vols I-IV, Lund: Rättshistoriskt Bibliotek 1995-2002, presents Ørsted in relation to Nordic legal scholarship in the context of natural law and Kant (vol I, 229-235), and in relation to Romanticism and Savigny (vol II). He concludes that 1815-1870 is "the era of Ørsted and Savigny" (vol II, 427-434). Sverre Blandhol, *Nordisk Rettspragmatisme. Savigny, Ørsted og Scheweigaard om vitenskap og metode*, Copenhagen: DJØF Publishing Copenhagen 2005, is the most recent analysis of Ørsted's influence on Nordic legal scholarship in general. Ditlev Tamm, ed., *Anders Sandøe Ørsted 1778-1978. Foredrag i anledning af 200-året for Anders Sandøe Ørsteds fødsel*, Copenhagen: Juristforbundets forlag 1980 (with summaries in German, 197-216), presents Ørsted's thinking in a broader philosophical context, including his contributions to ecclesiastical law. This is discussed in more detail in Per Kristian Aschim: *Herskende religion i den kristelige stat. Den statsteoretiske diskursen om religion og stat med henblik på norsk religionspolitikk i 1840erne* (unpublished dissertation Menighetsfakultetet, Oslo 2017), analyzing Ørsted's influence in Norwegian development of ecclesiastical law and politics in the first part of the 19th century.

^{ix} Knud Waaben, *Jura på Frue Plads. Juridisk forskning og uddannelse ved Københavns Universitet gennem 500 år*, København: GadJura 2005, 167 ff.

^x Tamm, *Fra 'Lovkyndighed' til 'Retsvidenskab'*, 1976, 13 ff and 331 ff.

^{xi} Leif Grane, "Ørsted og Kirkekampen i 1820erne," in Tamm ed., 1980, 125-127.

- ^{xii} A.S. Ørsted, *Af mit Livs og min Tids Historie* vols. I-IV, København: Gyldendalske Boghandel, 1851; 1852; 1855; 1857. See vol 1, 13-14: "Hvo som har levet på hiin Tid veed, at hele den yngre Verden sværmede for den religiøse og borgerlige Frihed, som ved Hjælp af den franske Revolution skulde udbrede sig trindt omkring i Landene ... - Det har derfor altid moret mig, naar vor Tids Presse har forestilt sig os Ældre som opvoxede i Trældommens og Mørkets Dage, og deri fundet Undskyldning for, at vi ikke forstode de Frihedens Toner, som, efter hvad man meente, nu først kom os imøde. I Sandhed kunne vi om Meget af det, man nu vil lære os, sige, at vi 'det alt har med vore Barnesko slidt'".
- ^{xiii} Tamm, *Fra 'Lovkyndighed' til 'Retsvidenskab'*, 1976, 198 ff. Dalberg-Larsen names this method "realistic" with its combination of abstract theoretical approaches and the concrete cases and solution, as well as between natural legal thinking and social circumstances, *Retsvidenskaben som samfundsvidenskab*, 1977, 229-242.
- ^{xiv} Blandhol, *Nordisk Rettspragmatisme*, 172.
- ^{xv} Tamm, 1976, ch 14.
- ^{xvi} A.S. Ørsted, *Over Sammenhængen mellem Dydslærens og Retslærens Princip*, vols. 1-2, Copenhagen 1798.
- ^{xvii} *Af mit Livs og min Tids Historie*, vol 1, 24: "dette Værk [Kant's Grundlegung der Metaphysik der Sitten] havde saadanne svage Sider, at det maatte gjøre Afbræk i den beundrende Tillid til den vise Olding, hvortil jeg saa gjerne overlod mig". On Ørsted's views on Kant's practical philosophy, see Mogens Blegvad, "Ørsted som moralfilosof 1796-1811". In Tamm ed., 1980, 33-53.
- ^{xviii} A.S. Ørsted, *Af mit Livs og min Tids Historie*, vol 1, 8: "Men det varede ikke mange Aar førend jeg frigjorde mig for, hvad der i min Forkjærlighed for disse Tydslands philophiske Choryphæer var blindt og slavisk, og man vil ikke fra 1801 finde noget i mine Skrifter, som smager deraf." See also Tamm 1976, 367 ff.
- ^{xix} The 1807-lecture is reprinted in *Eunomia*, vol 1, København: Andreas Seidelin 1815, 39-93 under the title, "Om Forholdet mellem Religion og Stat" [On the relation between religion and stat].
- ^{xx} Elegantly formulated in *Eunomia* vol. 1, 47: "Moraliteten er *det første*, men Religionen *det største*." On the indispensability of religion for both morality and state governance, see 81.
- ^{xxi} *Eunomia* vol 1, 55: "Fornuftkraftens Udvikling i sin hele Fylde og Herlighed er dens [Statens] Øiemed".
- ^{xxii} *Eunomia* vol 1, 66.
- ^{xxiii} *Eunomia* vol 1, 81. See also Björne, vol II, 427 f.
- ^{xxiv} See also the constitutional clauses on king and religion in the Norwegian Eidsvoll-constitution of 1814, Aschim 2017, 195 ff.
- ^{xxv} Blandhol 2005, 177-182, highlights the pragmatic dimension of Ørsted's acknowledgement of state-interest in religion, based on Ørsted's argument that the state is responsible for organizing a good society, cf. Ørsted, 1851, vol 1, 7 ff.
- ^{xxvi} Tamm 1976, 382-386 discusses how Ørsted interpreted and used the influence from the German historical school. According to Tamm, Ørsted argued that Savigny could sometimes overemphasize the historical understanding of the laws; Ørsted wanted to combine this understanding with the concrete situation.
- ^{xxvii} Ørsted, "Introductory speech to lectures on ecclesiastical law", *Juridisk Arkiv* 27-28, 1-17, here quoted from Leif Grane, "Ørsted og kirkekampen i 1820'erne", in Tamm ed. 1980, 126.
- ^{xxviii} Ørsted himself did not write a text book on Ecclesiastical law. Professor J.L.A. Kolderup-Rosenvinge wrote the first introduction to ecclesiastical law in Danish, *Grundrids af den danske Kirkeret. Til Brug ved Forelæsninger*, København: Gyldendalske Boghandlings Forlag 1838. Kolderup-Rosenvinge was a disciple of Ørsted, so Björne, vol. II, 31: "Till Ørsteds nærmaste elever bland professorerna kan man råakna Janus Lauritz Andreas Kolderup-Rosenvinge (1792-1850)." In his introduction to *Grundrids af den danske Kirkeret*, Kolderup-Rosenvinge builds on Ørsted's legal thinking by including the theological foundational sources (the Bible, the confessions etc) among the legal sources alongside legislation etc., and by recommending a good knowledge of church history as the precondition for a deeper understanding of ecclesiastical law.
- ^{xxix} In his memoirs, Ørsted mentions that his legal philosophical program was generally acknowledged by legal authorities of the time, Ørsted 1851, vol 1, 137-141. He also mentions that even Grundtvig commented positively on his introduction to the teaching of ecclesiastical law, referring to Grundtvig's *World Chronicle* of 1812 (141).
- ^{xxx} A series of five volumes of N.F.S. Grundtvig's works are published over the last years: (1) *The School for Life: N.F.S. Grundtvig on Education for the People*, eds. Edward Broadbridge (trans.), Clay Warren, and Uffe Jonas, Aarhus: Aarhus University Press Aarhus 2011. (2) *Living Wellsprings: The Hymns, Songs and Poems of N.F.S. Grundtvig*, trans. and ed. Edward Broadbridge, Aarhus: Aarhus University Press 2015. (3) *Human Comes First. The Christian Theology of N.F.S. Grundtvig*, trans. and ed. Edward Broadbridge, Aarhus: Aarhus University Press 2018. (4) *The Common Good: N.F.S. Grundtvig as Politician and Contemporary Historian*, eds. Edward Broadbridge (trans.) and Ove Korsgaard, Aarhus: Aarhus University Press 2019. (5) *The Advance of Learning: N.F.S. Grundtvig's Philosophical Writings*, ed. and trans. Edward Broadbridge, Aarhus: Aarhus University Press 2020 (forthcoming). See also the substantial volume N.F.S.

Grundtvig, *Skriften in Auswahl*, eds. Knud Eyvind Bugge, Flemming Lundgreen-Nielsen, and Theodor Jørgensen, Göttingen: Vandenhoeck & Ruprecht 2010. Autobiographical sketches in *N.F.S. Grundtvig. A Life Recalled. An Anthology of Biographical Source-Texts*. Translated from the Danish and edited by S.A.J. Bradley, Aarhus: Aarhus University Press 2008.

^{xxx} On Grundtvig's intellectual context and theological development, see A.M. Allchin, *Grundtvig: An Introduction to his Life and Work*, Aarhus: Aarhus University Press 2015, and Niels Henrik Gregersen: 'Church and Culture in Living Interaction – Grundtvig the Theologian', in *Human Comes First: The Christian Theology of N.F.S. Grundtvig*, Aarhus: Aarhus University Press 2018, 22-54. On the development of Grundtvig's political thinking and career, see Ove Korsgaard, *N.F.S. Grundtvig – as a political Thinker*, Copenhagen: DJØF Publishing 2014. A good primer to Grundtvig's multifaceted biography with excerpts is Anders Holm, *The Essential N.F.S. Grundtvig*, Aarhus: Filo Forlag 2019. Publications on Grundtvig's reception history include *Grundtvig in International Perspective. Studies in the Creativity of Interaction*, eds. A.M. Allchin, S.A.J. Bradley, N.A. Hjelm, J.H. Schjørring, Aarhus: Aarhus University Press 2000, and *Building the Nation. N.F.S. Grundtvig and Danish National Identity*, eds. John A. Hall, Ove Korsgaard, and Ove K. Pedersen, Copenhagen: DJØF Publishing 2015.

^{xxxii} Henrich Steffens, *Indledning til filosofiske Forelæsninger*, Copenhagen 1803.

^{xxxiii} See the poem, "Henrik Steffens" (1845), translated in *Living Wellsprings*, 300-302.

^{xxxiv} The brief poem, "High Odin, White Christ!", is translated in *Living Wellsprings*, 225.

^{xxxv} N.F.S. Grundtvig, *A Life Recalled*, 102 ff. We have not found evidence suggesting that Ørsted played an active role in the 1810 case against Grundtvig.

^{xxxvi} The text of the dismissory sermon, with letters and poems to his parents, are printed in N.F.S. Grundtvig, *Værker i Udvalg*, eds. Georg Christensen and Hal Koch, Copenhagen: Gyldendal 1944, vol. 1, 250-270 (quotation 250).

^{xxxvii} "Dejlig er den Himmel blaa" is translated in *Living Wellsprings*, 82-83.

^{xxxviii} See Anders Pontoppidan-Thyssen, "Grundtvig's Ideas on the Church and the People up to 1824", in *N.F.S. Grundtvig, Tradition and Renewal*, eds. Christian Thodberg and Anders Pontoppidan Thyssen, Copenhagen: The Danish Institute 1983, 87-120 (114ff).

^{xxxix} N.F.S. Grundtvig, "On Godly Assemblies" (1825), translated in *Human Comes First*, 80-89.

^{xl} N.F.S. Grundtvig, *The Church's Retort to Professor of Theology Dr. H.N. Clausen* (1825), translated in *Human Comes First*, 57-79 (73). Grundtvig shows no regret in "On the Clausen Libel Case" (1831), translated in *Human Comes First*, 105-113.

^{xli} N.F.S. Grundtvig, *Nordic Mythology* (1832), translated in *The School for Life*, 42-75 (66).

^{xlii} See Grundtvig's chapter on "England as a Model" (1838) in *Within Living Memory*, translated in *The Common Good*, 120-124.

^{xliii} See N.F.S. Grundtvig, "On Godly Assemblies" (1825) and "on Religious Persecution" (1842), translated in *Human Comes First*, 80-89 and 164-176.

^{xliv} N.F.S. Grundtvig, "Religious Freedom and Bodily Freedom" (1845), translated in *The Common Good*, 211-216 (211).

^{xlv} See the text excerpts on the freedom of people and slaves 1830-1848, translated in *The Common Good*, 173-223.

^{xlvi} See the texts translated in *The School for Life*, 173-351.

^{xlvii} Tine Damsholt, "'Hand of King and Voice of People': Grundtvig on Democracy and the Responsibility of the Self", in Hall et al eds., *Building the Nation. N.F.S. Grundtvig and Danish National Identity*, 151-167.

^{xlviii} N.F.S. Grundtvig: "Against the Proposed Constitutional Revision" (1866), translated in *The Common Good*, 339-343.

^{xlix} A.S. Ørsted's letter to H.C. Ørsted of February 6, 1813, cited in Erland Jessen, "Striden mellem Grundtvig og H.C. Ørsted 1414-15", *Grundtvig Studier* 1971, 31-72 (40).

ⁱ H.C. Ørsted, *Imod den store Anklager* [Against the Big Accuser], Copenhagen 1814; the title of Grundtvig's rejoinder can be translated as, *Against the little Accuser, that is, Prof. H.C. Ørsted, with Evidence that Schelling's Philosophy is unchristian, ungodly, and mendacious by N.F.S. Grundtvig, Pastor*, Copenhagen, 1815.

ⁱⁱ H.C. Ørsted, *Imod den store Anklager*, 1814, 9, 111, and 16.

ⁱⁱⁱ N.F.S. Grundtvig, "Kort Begreb af Verdens Krønike i Sammenhæng," *Værker i Udvalg*, vol 1, 417.

^{lii} H.C. Ørsted, *Imod den store Anklager*, Copenhagen 1814, 37-38.

^{liv} Friedrich Schleiermacher, *Der christliche Glaube nach den Grundsätzen der evangelischen Kirche im Zusammenhange dargestellt* [1821-22¹, 1831²], Berlin: De Gruyter 1960, § 24.

^{lvi} P.D. Christian Paulsen, *Betragtninger over den Danske Kirkes symboliske Bøger fra den kirkeretlige Synspunkt* [Considerations on the Symbolic Books of the Danish Church from the Perspective of Ecclesiastical Law], Copenhagen 1826.

- lvii A. S. Ørsted, "Behøver den danske Kirkeforfatning en omgribende Forandring?," *Juridisk Tidsskrift* 12:1-2, 213-88 and 250-304, cited from the reprint in Frantz Dahl, *Frederik VI og Anders Sandøe Ørsted i 1826. En aktmæssig Fremstilling*, Copenhagen: Gyldendal 1929, 1-115.
- lviii Ørsted in Dahl 1929, 5.
- lix Ørsted in Dahl 1929, 6-7: "hæmmet ved et forbittret Stridsraab".
- lx Ørsted in Dahl 1929, 23-35 (25).
- lxi Ørsted in Dahl 1929, 33.
- lxii Ørsted in Dahl 1929, 67-98, 90 and 88: "saa synes Hr. Professor Clausen altfor let at have beroliget sig mod den Frygt, at en saadan Forfatning kunde fremkalde Hyklerie."
- lxiii Ørsted in Dahl 1929, 51 "Præster skal holde sig fra de dogmatiske Forestillinger, der enten er ufrugtbare for den levende kristelige Tro og det gudelige Sind eller endog forvirre Gemytterne".
- lxiv Ørsted in Dahl 1929, 51-52: "Thi langt fra at Kristendommen skulde staa i et fjendtligt Forhold til den Indsigt, der er erhvervet ved Fornuftens Anstrengelse, fører denne netop til den Erkendelse, at alle Visdommens og den højere Kundskabs Skatte indeholdes i Evangeliet".
- lxv Letter to Julius Kaas August 11, 1826: "Skal Læren om Djævelens indvirkninger paa Mennesket og om evige Helvedsstraffe samt det athanasianske Symbols subtile Bestemmelser om Treenighedslæren være lige saa hellige som Læren om den evige Kærligheds Aabenbaring i Kristus, Guds Søn og Verdens Frelser, saa gives der ikke 10 rettroende Præster i hele Landet", quoted in Dahl 1929, 122. See further Hans Jensen, "Fr. Juul Kaas og A.S. Ørsted i 1826", *Historisk tidsskrift* 1931, 51-77.
- lxvi N.F.S. Grundtvig, *Vigtige Spørgsmaal til Danmarks Lovkyndige fra Nik. Fred. Sev. Grundtvig, Præst*, Copenhagen: Madvigsk Boghandel 1826, 6: "hr. Etatsraaden og jeg [er] i Grunden juridisk enige, skjøndt vore Tilbøieligheder, under Anvendelsen, drage os til modsatte Sider."
- lxvii N.F.S. Grundtvig, *Vigtige Spørgsmaal*, 7.
- lxviii N.F.S. Grundtvig, *Vigtige Spørgsmaal*, 19.
- lxix N.F.S. Grundtvig, *Vigtige Spørgsmaal*, 32.
- lxx N.F.S. Grundtvig, *Vigtige Spørgsmaal*, 33.
- lxxi N.F.S. Grundtvig, *Vigtige Spørgsmaal*, 31 and 50.
- lxxii N.F.S. Grundtvig, *Vigtige Spørgsmaal*, 36.
- lxxiii Frantz Dahl, *Frederik VI og Anders Sandøe Ørsted i 1826*, xxxiv.
- lxxiv Ørsted in Dahl 1929, 100.
- lxxv Ørsted in Dahl 1929, 98-107.
- lxxvi N.F.S. Grundtvig, "A Time of Transition in Denmark" (1849), translated in *The Common Good*, 289-304 (297).
- lxxvii Vind, Ole, "'The Gordian Knot': Grundtvig and British Liberalism", in Hall et al. eds., 2015, 254-266.
- lxxviii N.F.S. Grundtvig, "An Impartial View of the Danish State Church" (1834), translated in *Human Comes First*, 114-155.
- lxxix Jens Rasmussen, *Religionstolerance og religionsfrihed. Forudsætninger og Grundloven i 1849*, Odense: Syddansk Universitetsforlag 2009, 155-159.
- lxxx Hanne Sanders, "Religious Revivalism in Sweden and Denmark," in *Building the Nation. N.F.S. Grundtvig and Danish National Identity*, Hall, Korsgaard, and Pedersen eds., 95-109.
- lxxxi A.S. Ørsted 1855, vol 3, 296-298. In spite of the Lutheran absolutism (1560-1849), Jews were from 1683 acknowledged to settle in the Kingdom as 'foreign believers'. Their situation as 'foreigners' was clarified with the introduction of Danish citizenship in 1776. Riots against the Jewish population after the state bankruptcy in 1813 and the loss of Norway at the peace in Kiel 1814 led the state to offer the Jewish population citizenship. Again in 1819, the King issued a public statement, commenting on 'my Jewish citizens' in order to settle peace. Ørsted was a leading force in the strategy of changing the Jewish population into citizens, as an alternative to sending them out of the country.
- lxxxii Ørsted in Dahl 1929, 102-03.
- lxxxiii On this regulation, see Kolderup-Rosenvinge 1838, 102-108.
- lxxxiv On the Baptists, see Rasmussen 2009, 169-194.
- lxxxv Rasmussen, 2009, 180 ff.
- lxxxvi Ørsted, 1855, vol 3, 177.
- lxxxvii N.F.S. Grundtvig, "On Religious Persecution" (1842), in *Human Comes First*, 164-176 (166)..
- lxxxviii See Jes Fabricius Møller, "Katolikernes stilling og antikatholicisme i Danmark 1800-1849" [The position of Catholics and anti-Catholic views in Denmark 1800-1849], *Kirkehistoriske Samlinger* 2012, 113-136; Rasmussen 2009, 110-134.

^{lxxxix} Rasmussen 2009, 121 ff.

^{xc} Rasmussen 2009, 127-128.

^{xc} The debates at the assembly are transcribed in *Beretning fra Forhandlingerne paa Rigsdagen 1849*. The negotiations concerning the clauses on religion and church took up more than 1/10 of the negotiations. H.N. Clausen was a member of the government; J.N. Madvig the responsible minister in the government, while C.C. Hall represented the committee that had prepared the discussion. Together with these three officials, Grundtvig and Ørsted were among those who participated most eagerly in the debate, see H.J.H. Glædemark: *Kirkeforfatningsspørgsmaalet i Danmark*, Copenhagen: Ejnar Munksgaard 1948, 242.

^{xcii} See *Beretning*, cols. 1597-1605.

^{xciii} C.C. Hall, *Beretning*, col. 2165: "Ihvorvel det nemlig vistnok ogsaa i politisk Henseende maa betragtes som en Lykke for en Stat, naar der er Enhed i Borgernes religiøse Bekiendelse, saa er det dog klart, at Eenheden kun da i Sandhed er en Lykke, naar den er grundet paa Frihed, og at Staten derfor ikke gjør Ret i – enten i sin egen eller i en privilegeret Kirkes Interesse – at ville sikre Eenheden ved Lovens Tvang, hvorved den ikke kan undgaae at besvære Manges Samvittighed og at krænke en Ret, som for Enhver maa regnes til de helligste blandt Alle."

^{xciv} N.F.S. Grundtvig, *Beretning*, col. 2513.: "Jeg skulde derfor ogsaa have ønsket, at den Paragraph i Grundloven som fastsætter en saadan Gudsdyrkelsesfrihed, at den var ved denne Leilighed kommen til at staae i Spidsen."

^{xcv} *Beretning*, col 36.

^{xcvi} *Beretning*, cols. 2513, 2517, and 3037.

^{xcvii} *Beretning*, col. 2514.

^{xcviii} A.S. Ørsted, *Beretning*, col. 2526: "Jeg er vel overbeviist om, at det er i Religiøsitetens og i Folkets Tarv i det hele, at al den Tvang, der er forbunden med Begrebet om en herskende Kirke, bortfalder, men jeg mener dog, at Kirken, idet den saaledes afklæder sig Begrebet af at være den herskende, dog ligefuldt maa beholde sin Charakter af offentlig og fremdeles maa beholde sin Berettigelse til som offentlig Religion at læres og øves overalt, og jeg troer, at dette i høi Grad er vigtigt for Folkets aandelige og borgerlige Værd".

^{xcix} N.F.S. Grundtvig, *Beretning*, col. 3101: "Der burde efter mine Tanker slet ikke være nogen Grundlovsbestemmelse om saadanne foranderlige og omtvistelige Ting som Kirkegods, Kloster gods og alt andet beneficeret Gods."

^c A.F. Tscherning, *Beretning*, col. 3055: "[Vi ønsker ikke] en dobbelt Rigsforsamling her i landet"; I.A. Hansen, *Beretning fra Forhandlingerne*, col. 3111: "Forslaget ... maa være udgaaet fra et katholsk Begreb om Kirken."

^{ci} H.N. Clausen, *Beretning*, col. 2526: "en Folkerepræsentation, som kunde siges at være Folkets politiske Repræsentation, [kan] derfor ikke siges at være dets kirkelige Repræsentation. Det er forskellige Kundskaber og Indsigter, en forskjellig Aandsretning og Interesse." In his argumentation, Clausen incidentally uses a distinction between "inner and external affairs of the church" (col. 2532), which still today plays a central role in discussions of the relations between state and church in Denmark.

^{cii} A.S. Ørsted, *Beretning*, col. 3072: "det [kan] virkelig ikke tilstedes i en velordnet Stat, at der kan føres de allerfordærveligste Lærdomme..., som aabenbart tillode Forræderi, Meened, at krænke Eiendomsretten eller hvilken som helst Udaad."

^{ciii} A.S. Ørsted, *Beretning*, col. 3073.: "Alt hvad der er nødvendigt for at forberede større Religionsfrihed, som vistnok bør indføres, det er, at der optages en saadan Bestemmelse som den, at de fra Folkekirken afvigende Religioners Forhold skulle ordnes ved Lov." This sentence is now almost verbatim in § 69 of the Constitution, referring back to the rules on freedom of religion in § 67.

^{civ} Now The Danish Constitution § 70: "No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights, nor shall he escape compliance with any common civic duty for such reasons."

^{cv} A.S. Ørsted, *Beretning*, col. 2546: "man [kan] dog ikke vilde tillade en offentlig Øvelse af nogen Troesbekjendelse, uden den iforveien var Staten bekjendt og undergiven Statens Tilsyn."

^{cvi} A.S. Ørsted, *Beretning*, col. 5547: "forargeligt, om en Jøde skulde være Dommer"; "Visse Stillinger ... kunde falde i hænderne paa Katholiker eller Jøder."

^{cvi} N.F.S. Grundtvig, *Beretning*, col 5548, cf. 5549: "Den danske Mand maa være ligeberettiget til Alt".

^{cvi} N.F.S. Grundtvig, *Beretning*, col 2170: "[Når] de, som skulde bedømme Lærdommen, vare af en anden Troesbekiendelse, ville de ved tusinde Leiligheder kunne finde Noget, som muligen kunde blive skadeligt for Sædeligheden og den offentlige Orden, hvilket altsaa maatte skille hine Troesbekiendere igjen ved deres frie Gudsdyrkelse".

^{cix} Ove Korsgaard, *N.F.S. Grundtvig – as a Political Thinker*, 2014, 68-69.

^{cx} § 66: "Folkekirkens forfatning ordnes ved lov."

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- ^{cxix} N.F.S. Grundtvig, "The People, the People's Church, and Popular Belief in Denmark" (1851), translated in *Human Comes first*, 197-230. See also Poul Andersen, *Grundtvig som Rigsdagsmand*, Copenhagen: Gyldendal 1940, 32 ff. Poul Andersen was a professor of public administrative law at the University of Copenhagen.
- ^{cxii} Andersen, 1940, 32.
- ^{cxiii} See Henning Koch og Kristian Hvidt, *Danmarks riges Grundlove 1849-1866-1915-1953*, Copenhagen: Chr. Ejlers' Forlag 1999, § 68, second sentence.
- ^{cxiv} A law on religious communities was not introduced until December 2017.
- ^{cxv} Lisbet Christoffersen, 'Ved Lov', *Ugeskrift for Retsvæsen*, 1998, 505-510.
- ^{cxvi} Andersen, 1940, 34. It should be noted, though, that Grundtvig even did not support the general obligation for the municipalities to organize schools for all children; according to him, education should be in the hands of the parents.
- ^{cxvii} Andersen, 1940, 43-47.
- ^{cxviii} Andersen, 1940, 43.
- ^{cxix} Andersen, 1940, 49-51.
- ^{cxix} Andersen, 1940, 51-52.
- ^{cxix} Povl Bagge, "Ørsted som politiker", in Tamm 1980 ed., 139-148 (144).
- ^{cxix} Bagge 1980, 141 and 147.
- ^{cxix} Initially, Grundtvig was even against discussing a new Constitution during wartime, see Andersen 1940, 18.
- ^{cxix} N.F.S. Grundtvig: "For the General Franchise", speech in the upper house July 16, 1866, translated in *The Common Good*, 344-345 (345). Italics in original.
- ^{cxix} N.F.S. Grundtvig, *Vigtige Spørgsmål til Danmarks Lovkyndige*, 7.
- ^{cxix} "Noch Liegen die Lofve Dunkel verhüllt in der Zukunft Schovfe! Doch es wird sich noch eh wir uns trennen entscheiden."
- ^{cxix} Ove Korsgaard, "N.F.S. Grundtvig and his time", in *The Common Good*, 21-40 (31).
- ^{cxix} N.F.S. Grundtvig, "The Danish and the French Revolutions" (1838), translated in *The Common Good*, 63-71.
- ^{cxix} Bagge 1980, 147.